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FILED
08/24/2023
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
43B-0804-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Fellowship Peak LLC; Ronald R. Peterson

CASE 43B-0804-R-2022
43B 1331-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

THE TIMELY FILED OBJECTION OF MT DEPT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

THE SOURCE NAME APPEARS TO BE INCORRECT. THE SOURCE NAME APPEARS TO BE MULHERIN CREEK.

The source name issue remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. In addition, there is a pending request from the Montana Department of Natural Resources and Conservation [“DNRC”] to split the claim (Split Memorandum filed December 10, 2018).

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The January 12, 2023 Court Minutes and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the DNRC to resolve the issue remark. The July 21, 2023 DNRC Memorandum states that the claimants contacted the DNRC and makes a recommendation concerning resolution of the issue remark. The July 25, 2023 Order Setting Filing Deadline Pursuant To Section 85-2-248, MCA states:

On July 21, 2023 the DNRC filed its Memorandum as directed in the Court’s May 1, 2023 Order Extending Deadlines. The deadline for the claimants to file their documents to resolve the issue remark was July 14, 2023. Nothing was filed by the claimants. Therefore, pursuant to section 85-2-248, MCA, it is ORDERED that the deadline for the claimants to file documentation stating whether they agree or disagree with the DNRC Memorandum is **August 8, 2023**. If nothing is filed by the deadline, the Court will conclude the claimants agree with the DNRC Memorandum.

Nothing was filed by the claimants. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

The Water Court may split a claim with multiple owners into separate claims upon request of all of the claimants prior to issuance of the final decree. Rule 26, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the source name is UNNAMED TRIBUTARY OF MOL HERON CREEK. The source name should be UNNAMED TRIBUTARY OF MULHERIN CREEK. The issue remark should be removed as resolved. The remark concerning amendment of the timely filed objection should be removed as having served its notice purpose.

2. Claim 43B 1331-00 should be modified to represent only the Fellowship Peak LLC portion of the claimed right. Claim 43B 30160046 should be generated for the Ronald R. Peterson portion of the claimed right.

3. Claim 43B 1331-00 should be modified as follows: 1) the ownership should be modified by removing Ronald R. Peterson as a co-owner, 2) the flow rate should be reduced from 224.40 GPM to 164.56 GPM, 3) the maximum acres should be reduced from 15.00 acres to 11.00 acres, and 4) the place of use should be 11.00 acres in GOVT LOT 3, NW section 2, T9S, R7E, PARK.

4. The elements of claim 43B 30160046 should be same as 43B 1331-00 except: 1) the owner should be Ronald R. Peterson, 2) the flow rate should be 59.84 GPM, 3) the maximum acres should be 4.00 acres, and 4) the place of use should be 4.00 acres in GOVT LOT 2, NE section 2, T9S, R7E, PARK.

CONCLUSION OF LAW

The DNRC Memoranda provide sufficient information to split the claim in order to reflect the divided interests and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin and to split claim 43B 1331-00 as requested. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes to 43B 1331-00 and the generation of split claim 43B 30160046 have been made in the

state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Fellowship Peak LLC
2859 Paces Ferry Rd SE Ste 1140
Atlanta, GA 30339

Ronald R. Peterson
PO Box 432
Gardiner, MT 59030

\\JUDHLNSRV-DATA\SHARE\JUDGALH2OSRV (DATAVOL)\SHARE\WC-BASIN FOLDERS\43B PD\43B CASES\804R\804R MR 8-11-23 JBC.DOCX

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 1331-00 STATEMENT OF CLAIM
Version: 3 -- SPLIT POST DECREE
Status: ACTIVE

Owners: FELLOWSHIP PEAK LLC
2859 PACES FERRY RD SE STE 1140
ATLANTA, GA 30339

Priority Date: MAY 15, 1920

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 164.56 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 11.00

***Source Name:** UNNAMED TRIBUTARY OF MULHERIN CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWNW	2	9S	7E	PARK
Period of Diversion:	MAY 15 TO SEPTEMBER 15					
Diversion Means:	HEADGATE					
Period of Use:	MAY 15 TO SEPTEMBER 15					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	11.00	3	NW	2	9S	7E	PARK
Total:	11.00						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30160046 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: RONALD R PETERSON
PO BOX 432
GARDINER, MT 59030

Priority Date: MAY 15, 1920

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 59.84 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 4.00

Source Name: UNNAMED TRIBUTARY OF MULHERIN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWNW	2	9S	7E	PARK

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 15 TO SEPTEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.00	2	NE	2	9S	7E	PARK

Total: 4.00